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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91226317
Party	Defendant YOLOTech, LLC
Correspondence Address	YOLOTECH LLC 7711 BAYSHORE DRIVE MARGATE CITY, NJ 08402 UNITED STATES
Submission	Answer
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Date	03/18/2016
Attachments	YOLOtech LLCAnswer to Notice of Opposition.pdf(332913 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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**MMETRO.COM LLC** :  
c/o Pilot Group Manager :  
75 Rockefeller Center, 23<sup>rd</sup> Floor :  
New York, New York 10019 :  
Opposer, :

**OPPOSITION No. 91226317**  
**SERIAL No. 86/504,326**

v. :

**YOLOTECH, LLC** :  
7711 Bayshore Drive :  
Margate City, New Jersey 08402 :  
Applicant. :

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**ANSWER TO THE NOTICE OF OPPOSITION AND AFFIRMATIVE DEFENSES**

**NOW COMES** the Applicant, YOLOtech, LLC, a Delaware limited liability company [“Applicant”], by and through the undersigned counsel, who herein files with the Trademark Trial and Appeal Board Applicant’s Answer to the Notice of Opposition filed by mMetro.com, LLC, a New York limited liability company [“Opposer”] on February 16, 2016, together with Affirmative Defenses. This matter arises out of Application Serial No. 86/504,326 filed by the Applicant on January 15, 2015 seeking registration of the THRILLIA trademark.

Applicant answers the Notice of Opposition as follows:

**I. Applicant’s Answer to Section 2(d) Likelihood of Confusion**

1. Admitted in part and denied in part. It is admitted that Opposer is the owner of the THRILLIST Mark registered under the International Class listings set forth in the Notice of Opposition. It is denied that Opposer ever used, currently uses, or has any intention to use the THRILLIST Mark for all of the goods and services recited in the Opposition or any other registration, and proof of same is demanded. By way of further response, and as proof that Opposer

does not provide all of the services that it claims, THRILLIST self-describes the platform it uses for “electronic commercial services” as follows:

**SO, WHAT'S THE DEAL WITH THRILLIST?**

It's pretty simple, actually. We're obsessed with everything that's worth caring about in food, drink, and travel. Need to find that speakeasy hidden beneath the abandoned subway station? We'll get you in. Do you care deeply about staying on top of the best burger joints, steakhouses, dive bars, cocktail lounges, clubs, concerts, and festivals where you can throw tomatoes at your friends' faces really hard in cities all over the world? It's all here. Wondering how to legitimately live it up in amazing foreign lands for just \$50 a day? We've got that. If a store starts selling 100-packs of beer, we're on it. If a pizza cake exists, we'll be the first to tell you about that pizza cake. Also, the pizza cake does exist, and it's glorious.

2. Denied. In the absence of discovery, Applicant lacks sufficient knowledge and information upon which to form a belief as to whether Opposer has “continuously used Opposer’s THRILLISTS Marks in commerce in connection” the items set forth in paragraph 2 of the Notice of Opposition. These allegations are therefore denied, and proof of same is demanded. By way of further response, and as an admission that Opposer does not provide all of the services that it claims, THRILLIST’s self-described history and purported commercial activities are stated by mMetro.com as follows:

**How we got here**

Back in 2003, when the Internet was barely past a twinkle in Al Gore’s lusty eye, we began as an email newsletter in New York that highlighted the best bar and restaurant openings each day. From there, we expanded to LA, Chicago, San Francisco, and most of the rest of the meaningful world. We were also once home to a little something called Thrillist Nation, which dutifully covered everything important in life NOT involving food and booze. These days, its rampaging spirit lives on at our brother sites Supercompressor and JackThreads.

3. Denied. In the absence of discovery, Applicant lacks sufficient knowledge and information upon which to form a belief as to whether “Opposer has extensively advertised, promoted, marketed, and otherwise publicized its services such that consumers have come to know and recognize Opposer’s THRILLIST marks as identifying goods which originate with, are authorized by, or otherwise identify, Opposer.” These allegations are therefore denied, and proof of same is demanded. Upon information and belief, none of the “goods” referenced on the THRILLIST website actually “originate” from THRILLIST. Upon information and belief, neither mMetro.com nor THRILLIST are manufacturers, vendors, sellers, outlets, or purveyors of actual “goods,” and proof of Opposer’s actual goods and services is demanded.

4. Admitted in part and denied in part. It is denied that Applicant’s THRILLIA Mark is “virtually identical to the THRILLIST mark,” and any representation that the two marks are “virtually identical” misrepresents, misstates, and distorts the aural appreciation, meaning, imagery, and import of these two highly distinctive marks. There is neither confusion nor any likelihood for confusion with respect to these two separate and facially unique and distinct marks. It is admitted that the Applicant is establishing a two-sided marketplace for enthusiasts of various recreational services, on one side, and the vendors of various recreational services, on the other side, as a permissive interface for booking said recreational services. It is denied that the “Applicant’s applied-for services are closely related and/or complimentary to the goods and services marketed and sold by Opposer under Opposer’s THRILLIST Marks.”

5. Admitted in part and denied in part. It is admitted that the recited goods and services offered by THRILLIST *are not identical* with respect to those of the Applicant. This is a tacit admission by mMetro.com that there is no actual confusion or likelihood of confusion between the two marks. In fact, this is precisely why the Opposer’s opposition should be denied

by the Trademark Trial and Appeal Board. Further, there is no likelihood that consumers could, would, or will believe that the Opposer has “bridged the gap” or expanded into additional related and/or complimentary services with respect to Opposer’s Natural Zone of Expansion. In fact, the services provided by Applicant do not fall within the Opposer’s Natural Zone of Expansion nor will any of Applicant’s services create any likelihood of confusion with the services recited or actually provided by Opposer in connection with the THRILLIST Mark.

6. Denied. It is denied that the Trademark Trial and Appeal Board should refuse registration of Applicant’s THRILLIA mark pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d). It is denied that the THRILLIA Mark “closely resembles” Opposer’s THRILLIST Mark. Of particular note, within the space of two paragraphs in Opposer’s Notice of Opposition, mMetro.com, LLC’s representation of Applicant’s THRILLIA Mark metamorphosis from being “virtually identical” to the THRILLIST Mark, *see Notice of Opposition* at ¶4, to “closely resembles” the THRILLIST Mark. *See id.* at ¶6. Opposer’s representations are palpably contrived and wrong on both counts: These marks are not “virtually identical,” nor do they “closely resemble” one another. To the extent that Applicant’s mark and Opposer’s mark both contain the formative “THRILL-,” the same is permitted as a generic formative for any goods or services that may be thrilling or otherwise attractive to consumers, which is why there are more than one-hundred (100) current registrations that include “THRILL-” as an element. THRILLIA and THRILLIST create different commercial impressions. The THRILLIST Mark is more pedestrian, guttural, and conjures imagery of lists of items and things. The THRILLIA Mark is both whimsical and fanciful, and conjures imagery of thrilling and physically engaging activities. The Applicant’s THRILLIA Mark presents no likelihood for confusion with the THRILLIST Mark, nor will the THRILLIA Mark cause the “average purchaser” to be deceived into believing that the Applicant’s

services originate with Opposer. Additionally, there is no likelihood that the “average consumer” will be confused, deceived, or otherwise come to believe that the Applicant’s services are associated with, connected with, sponsored by, or otherwise authorized by Opposer. In fact, Opposer’s channels of trade do not reach out to the so-called “average consumer,” and instead purportedly appeal to a more sophisticated male-based clientele who gravitate towards upscale products and services, as clearly stated on the THRILLIST website as follows:

**We also sell basically everything you need to live right.**

Home bar essentials. Kitchenware that’s smarter than most grad students. A curated selection of sneakers, dress shoes & boots that we can stand behind. Watches that people will absolutely mistake for significantly more expensive watches. Tailored-fit suits made and priced to be lived in (and inevitably spilled on). Art and apartment furnishings your mother would be proud of. That perfect bachelor party weekender bag. Basically, we’re trying to make it easy to upgrade your life without ever leaving the ketchup-stained comfort of the Thrillist experience.

As noted above, *see* ¶3, contrary to THRILLIST’s statement that THRILLIST “also sell[s] basically everything you need to live right,” upon information and belief, THRILLIST does not actually “sell” any goods. Accordingly, for the reasons set forth herein, neither Opposer nor the public will suffer *any* consequent harm or injury from approval and use of the THRILLIA Mark by the Applicant.

## **AFFIRMATIVE DEFENSES**

### **First Affirmative Defense**

Opposer fails to state a claim upon which relief can be granted.

### **Second Affirmative Defense**

There is no likelihood of confusion, mistake or deception because, *inter alia*, the Applicant’s Mark and the alleged trademark of Opposer are not confusingly similar.

### Third Affirmative Defense

Alternatively, any similarity between the Applicant's Mark and Opposer's alleged trademark is restricted to that portion of the mark consisting of the word "thrill," which is not distinctive. As a result, under the antidissection rule, any secondary meaning Opposer may have in its alleged THRILLIST trademark is narrowly circumscribed to the exact trademark alleged and does not extend to any other feature of the trademark beyond the word "thrill."

### Fourth Affirmative Defense

Opposer's rights in and to the portion of its alleged THRILLIST trademark are generic or, in the alternative, merely descriptive of the goods and/or services allegedly offered under the mark. Opposer's alleged mark is therefore inherently unprotectable absent acquired distinctiveness, which the alleged THRILLIST Mark lacks.

**WHEREFORE,** Applicant respectfully requests that the Trademark Trial and Appeal Board deny the Opposition of mMetro.com to Applicant's THRILLIA Mark, and grant YOLOtech, LLC the THRILLIA Mark.

Respectfully submitted,

By:



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7711 Bayshore Drive  
Margate City, New Jersey 08402

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 18 day of March, 2016, a true copy of the and correct copy of the foregoing **ANSWER AND AFFIRMATIVE DEFENSES** was served via email and First Class U.S. Mail, postage pre-paid, on the following:

Ralph H. Cathcart, Esquire  
**LADAS & PARRY LLP**  
1040 Avenue of the Americas  
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MARK A. HOFFMAN, ESQUIRE

March 18, 2016

**CERTIFICATE OF ELECTRONIC FILING**

The undersigned certifies that this submission (along with any paper referred to as being attached or enclosed) is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals (ESTTA) on this 28 day of March, 2016.

  
MARK A. HOFFMAN, ESQUIRE